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October 19, 1994

Via UPS Overnight

Mr. Douglas Stuart, Chief
New Jersey Department of Environmental Protection
Bureau of Environmental Evaluation
and Cleanup Responsibility Assessment
401 East State Street, 5th Floor
Trenton, New Jersey 08625

Re: Hexcel Corporation
205 Main Street
Lodi Borough (Bergen County), New Jersey
ISRA Case No.: 86009

Dear Mr. Stuart:

This firm is counsel to the Fine Organics Corporation, the owner of the above-referenced property. Fine Organics has reviewed the NJDEP's September 15, 1994 letter to Edward A. Hogan, Esq., Hexcel Corporation's environmental counsel, and because of the significant issues raised therein Fine Organics responds with the following comments and concerns.

Summary of Fine Organics' Comments

1. Fine Organics is in agreement with the NJDEP's General Comment 11 (page 4 of 9/15/94 letter) that Hexcel shall increase its funding source to an amount equal to the highest estimated cost of remediation pursuant to \$25 of ISRA. However, for the reasons detailed below, Fine Organics believes that the May 5, 1994 GEO Engineering, Inc. estimate is not sufficient to address all of the remediation requirements at the site and those raised by the NJDEP in its September 15 letter. Consequently, Fine Organics believes that the \$4.3 million estimate by GEO has been significantly underestimated. Fine Organics' environmental consultant, Matrix Environmental Management, Inc. ("Matrix"), estimates that

*10/21/94 telecon
DAS to Naughton
Naughton not aware of 10% cost
preference - he will look @,
knows we are waiting for
Hexcel comments to
Mtg likely needed.*

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approximately \$12,429,000 will be needed to complete the required work (See 10/13/94 Matrix letter annexed hereto as Exhibit A).

2. Based upon the Matrix Estimate, and because of Hexcel's uncertain financial situation due to its Chapter 11 Bankruptcy status and the over \$1 Billion in environmental claims filed against Hexcel in that proceeding, Fine Organics requests that the NJDEP require Hexcel to increase its funding source to \$12,429,000 in accordance with \$25 of ISRA.

3. Also, Hexcel has made specific allegations in its papers filed with the United States Bankruptcy Court for the Northern District of California that Fine Organics has delayed or prevented Hexcel from implementing remedial activities at the property by denying its access. Based upon the comments made in the NJDEP's September 15, 1994 letter, Fine Organics is concerned that Hexcel has made these representations to the NJDEP as well. Fine Organics has never denied Hexcel reasonable access to its property since the matter began back in 1986. Indeed, Hexcel's equipment and/or its consultants have continually occupied and performed work at Fine Organics' property since 1986. As NJDEP may be aware, Fine Organics is required to provide Hexcel with reasonable access to its property pursuant to the terms of a January 20, 1986 License/Access Agreement between the parties (See 1/20/86 License Agreement annexed hereto as Exhibit B). The record is clear that since 1986 Fine Organics has complied with this Agreement.

4. There is no reason for Hexcel to proceed pursuant to \$40 of ISRA for site access. Fine Organics has and will continue to provide Hexcel with reasonable access to its property so that Hexcel can expeditiously comply with its obligations under ISRA, the NJDEP's September 15, 1994 Letter Directive and the terms of the 1986 License/Access Agreement. Moreover, Fine Organics has never specifically objected to Hexcel's plan to install a separate sewer line at the subject property. Additionally, Fine Organics does not anticipate any problems executing the CP-1 Form forwarded to it for Hexcel's Stream Encroachment Permit so that Hexcel can install a separate sewer line (See e.g., 10/14/94 letter to Edward A. Hogan annexed hereto as Exhibit C).

5. Since it is not clear what has been represented to the NJDEP by Hexcel concerning site remediation, Fine Organics wants to make it clear that it does not and will not consent to the recording of a Declaration of Environmental Restrictions with regard to the subject property, and therefore Fine Organics will insist that the NJDEP require the use of residential standards by Hexcel in their remediation of Fine Organics' property. See N.J.S.A. 58:10B-13 et seq.

6. The State of New Jersey should file an Amended Proof of Claim in the California Bankruptcy proceeding consistent with the increased funding source amount of \$12,429,000.

Background

Fine Organics owns and operates an industrial chemical business at a plant in Lodi, New Jersey (the "Property") which it acquired from the Hexcel pursuant to an Asset Purchase Agreement (the "Agreement"), dated December 31, 1985. The sale was conditioned upon Hexcel entering into an Administrative Consent Order ("ACO") with the New Jersey Department of Environmental Protection ("NJDEP"), whereby Hexcel has sole legal responsibility for the investigation and remediation of all contamination at the Property.

Hexcel entered into the ACO with the NJDEP, effective March 26, 1986. Hexcel was obligated by the provisions of the ACO to submit a sampling plan to the NJDEP pursuant to the ACO and to completely delineate the contamination at the Property. Hexcel was required to address all remediation as part of a Remediation Plan and to execute a Remediation Plan subject to NJDEP approval. On March 1, 1989, Hexcel filed its Remediation Plan with the NJDEP and estimated the cost of the proposed remediation at \$3,950,000. The NJDEP approved the Remediation Plan by letter dated July 31, 1990. The NJDEP required Hexcel to amend the amount of the posted financial assurance to \$4,000,000, a sum then equal to Hexcel's estimated cost of the cleanup.

Fine Organics, which has had no obligation imposed by law to

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perform remediation on the Property has, in fact, performed substantial remediation related to the Property, consistent with the Agreement. In that regard, among other things, Fine Organics has paid \$467,000 in environmental cleanup expenses under its Agreement with Hexcel. Fine Organics has paid \$78,000 to an environmental technician to perform environmental cleanup services for Hexcel.

When Fine Organics acquired the Property, it was intended that the Hexcel cleanup take approximately five years (by 3/91). The entire transaction, the purchase of the business and the real property, was premised on the fact that Property would be remediated to acceptable NJDEP standards by 1990. Under the May 5, 1994 Geo Engineering Proposal under a best case scenario, Hexcel's consultant has estimated that the cleanup could take another 5-6 years (by the year 2001), or ten years longer than originally anticipated.

NJDEP's September 15, 1994 Letter

By its September 15, 1994 letter to Hexcel, the NJDEP found Hexcel's Remedial Activities Schedule inadequate and required Hexcel to, inter alia, increase the funding source to an amount to the highest estimated cost of remediation. Hexcel was given 30 days to submit a new schedule to the NJDEP. As noted above, the current amount necessary for site remediation is estimated by Matrix to be \$12,429,000 at this time (See Exhibit A). Despite Hexcel's repeated acknowledgement to Fine Organics and the NJDEP of its sole legal responsibility for the remediation of the Property,

Hexcel has as of this date performed no substantial remediation.

1. Hexcel Shall Increase Its Funding Source To \$12,429,000.00 In Accordance With §25 of ISRA.

In its September 15, 1994 letter, the NJDEP noted in its General Comments (No. 11) that "since the May 5, 1994 cost estimate [from Geo Engineering] indicates an increase in the total cost for the implementation for the site's remediation, Hexcel shall, in accordance with P.L. 1993, c. 139 Section 25, increase the funding source to an amount equal to the highest estimated cost of remediation." Fine Organics is in full agreement that Hexcel should increase its funding source; however, it specifically disputes the \$4.3 budget outlined in the May 5, 1994 letter from GEO. Fine Organics' consultant believes that such an amount may not be sufficient to address all of the required remediation or the issues raised by the NJDEP in its recent letter. Additionally, Fine Organics' consultant believes that the technical issues involved with DNAPL delineation, recovery, remediation/containment, and monitoring may have been underestimated resulting in an undervalued level of effort and accompanying cost. As noted above, we have attached a copy of Matrix's October 13, 1994 detailed technical and cost analysis for your review and consideration (See Exhibit A).

2. The Uncertainty Of Hexcel's Financial Resources Due To Its Chapter 11 Bankruptcy Status Compel An Increase In The Funding Source To An Amount Equal To The Matrix Estimate.

On December 6, 1993, Hexcel filed a voluntary petition for

relief under the provisions of Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Northern District of California. It is our understanding that potential environmental claims have been filed in that proceeding by various parties which are in excess of \$1 Billion Dollars. In light of the above, Fine Organics is concerned that Hexcel may not have the financial resources to implement the required remediation activities at the Property set forth in the March 26, 1986 ACO, amendments thereto, and the NJDEP's September 15, 1994 letter. Therefore, the NJDEP should compel Hexcel to increase its funding source in an amount equal to the October 13, 1994 estimate by Matrix.

3. Any Delay In The Implementation Of Hexcel's Approved 1990 Cleanup Plan And Related Remedial Activities Is The Result Of Hexcel's Conduct In This Matter And Not Fine Organics.

As noted above, Fine Organics has never denied Hexcel reasonable access to its Property since the matter began back in 1986. Moreover, Fine Organics has never specifically objected to Hexcel's plan to install a separate sewer line at the Property. Indeed, such a plan was called for in the NJDEP-approved July 31, 1990 Cleanup Plan and the installation of a separate sewer by Hexcel is now compelled by the Passaic Valley Sewerage Commissioners. The record is clear that Hexcel's equipment and/or its consultants have continually occupied and performed work at the Property since 1986. Moreover, Fine Organics has gone out of its way to assist Hexcel with cleanup activities. In that regard, Fine

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Organics has paid \$467,000 in environmental cleanup expenses on Hexcel's behalf and approximately \$78,000 to an environmental technician to perform environmental cleanup services for Hexcel. Additionally, as noted above, Fine Organics is required to provide Hexcel with reasonable access to its Property pursuant to the terms of the January 20, 1986 License/Access Agreement between the parties (See Exhibit B). The record is clear that since 1986 Fine Organics has complied with that Agreement. Fine Organics believes that it has gone beyond the terms called for in that Agreement in cooperating with Hexcel in an effort to expedite the remediation of the Property.

4. There Is No Reason For Hexcel To Proceed For Site Access Pursuant To §40 of ISRA; Fine Organics Has and Will Continue To Cooperate With Hexcel So That A Separate Sewer Line(s) Can Be Installed At The Property.

Fine Organics has and will continue to cooperate in this matter. As noted above, Fine Organics has never objected to Hexcel's plan to install a separate sewer line at the subject Property. As set forth in our October 14, 1994 letter to Ed Hogan, Fine Organics will execute the CP-1 Form forwarded to Fine Organics for Hexcel's Stream Encroachment Permit, thereby allowing Hexcel to install a separate sewer line at the Property (See Exhibit C).

5. Fine Organics Will Not Consent To The Recording Of A Declaration Of Environmental Restrictions With Regard To The Subject Property And Therefore The NJDEP Should Compel The Use Of Residential Standards By Hexcel In The Remediation Of The Subject Property.

Hexcel's position in this matter seems to be that it can compel either Fine Organics to file a Declaration of Environmental

Restrictions on its Property or convince the NJDEP that non-residential cleanup standards should be applied to the site. Fine Organics specifically disputes this position. The sale of the subject Property to Fine Organics was conditioned upon Hexcel entering into an ACO with the NJDEP whereby Hexcel had sole legal responsibility for the investigation and remediation of all contamination at the Property, pursuant to the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 et seq. ("ECRA"). At the time of the signing of the Agreement (December 31, 1985) elimination of the contaminants was the only alternative permitted by the NJDEP. ECRA did not provide for, nor did the NJDEP administratively permit, remediation by way of leaving contaminants in place subject to institutional control (e.g. environmental restriction). Thus, Hexcel does not have any contractual or statutory entitlement to compel Fine Organics to place an Environmental Restriction upon its Property.

Although we do not believe that ISRA is applicable to this matter, N.J.S.A. 58:10B-13 et seq. makes it crystal clear that if Fine Organics does not consent to the recording of a Declaration of Environmental Restrictions with regard to the subject Property, the NJDEP shall require the use of residential standards in the remediation of Fine Organics' Property. N.J.S.A. 58:10B-13 states in pertinent part that:

- a. When real property is remediated to a nonresidential soil remediation standard or engineering or institutional controls are used

in lieu of remediating a site to meet an established remediation standard for soil, groundwater, or surface water, the department shall, as a condition of the use of that standard or control measure:

(2) require, with the consent of the owner of the real property, the recording with the office of the county recording officer, in the county in which the property is located, a notice to inform prospective holders of an interest in the property that contamination exists on the property at a level that may statutorily restrict certain uses of or access to all or part of that property, a delineation of those restrictions, a description of all specific engineering or institutional controls at the property that exist and that shall be maintained in order to prevent exposure to contaminants remaining on the property, and the written consent to the notice by the owner of the property;

b. If the owner of the real property does not consent to the recording of a notice pursuant to paragraph (2) of subsection a. of this section, the department shall require the use of a residential soil remediation standard in the remediation of that real property (Emphasis Added).

Since the statute expressly permits Fine Organics to give or withhold consent to a Declaration of Environmental Restrictions (and if it withholds consent then Hexcel must remediate to residential standards), we believe it is highly unlikely that the NJDEP or a court will compel Fine Organics to give consent to a Declaration of Environmental Restrictions on its Property.

Over the last few years Fine Organics and Hexcel have been negotiating for the potential reconveyance of the Property. The issue of whether or not Hexcel can compel Fine Organics to place an

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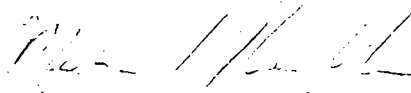
Environmental Restriction on the Property has always been a critical one that can not be agreed upon by the parties and one that effectively has prevented the reconveyance from being finalized. As noted above, we believe that the statute is clear that Hexcel cannot compel Fine Organics to place such an Environmental Restriction on its Property. We request NJDEP's position on this matter since it is extremely important to any potential reconveyance arrangement and to any planned remediation and cost estimate.

6. The State of New Jersey Should Amend Its Proof Of Claim In This Matter Consistent With The Matrix Cost Estimate Of \$12,429,000.

It is our understanding that the State of New Jersey, through Barclay's Bank, has filed a Proof of Claim in this matter consistent with the \$4,000,000 financial assurance posted by Hexcel. Should the NJDEP compel Hexcel to increase its financial assurance to \$12,429,000 or some other amount, the State of New Jersey should amend its Proof of Claim consistent with the increase.

Please contact the undersigned counsel if you have any questions or require any additional information or documentation at this time.

Very truly yours,



Michael J. Naughton

MJN:mc
Enclosures

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c: Mr. Wayne Howitz
Mr. Joseph Nowak, Case Manager
Mr. William J. Reidy
Edward A. Hogan, Esq.